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May 9, 2002

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The Honorable David M. Walker
Comptroller General
General Accounting Office
441 G St NW
Washington, D.C. 20548

IN RE: Revised Committee Request for a Study Concerning the Legal Services Corporation (LSC)

Dear Mr. Walker:

On March 12, 2002, we wrote to you requesting that the General Accounting Office (GAO) conduct a follow up study to GAO's September 1999 report titled "Legal Services Corporation: More Needs to be done to Correct Case Service Reporting Problems." The GAO acknowledged our request on April 4, 2002, and met with Subcommittee staff on April 12, 2002, to discuss the request. During this meeting, staff advised the GAO that new information had come to the attention of the Subcommittee, and we would like to expand the study beyond the initial scope. This letter provides the additional topics the Subcommittee would like examined, and becomes an addendum to our March 12, 2002 letter.

The GAO study should review the LSC-initiated process referred to as *State Planning*, including the formation of so-called State Justice Communities, and determine how this process has affected the program integrity and competition requirements set forth in the 1996 appropriations law. In LSC President John Erlenborn's written testimony to the Subcommittee for the February 28, 2002 Oversight Hearing, he described the Corporation's *State Planning Initiative* and how this has "radically changed the landscape of the national legal services delivery process." In order to implement this *State Planning Initiative*, the Corporation appears to have required all programs in a state, along with the state bar and, where applicable the Lawyers Trust Account programs, to work together to form individual State Justice Communities. It appears this process has promoted the establishment and/or continuance of LSC funded programs linked to

prohibited programs, which are improperly using federal funds to support prohibited work. This situation is described in the January 7, 2002 *Legal Times* article, which was provided to GAO staff at the April 12, 2002 meeting.

- The GAO should evaluate the results of LSC's *State Planning Initiative*. LSC began the *State Planning* changes in 1998, by requiring all LSC grantees develop and implement a plan which would result in an "integrated delivery system in every state." It is unclear to this Subcommittee the exact purpose and meaning of "integration." However, one measurable effect is the significant decrease in the number of grantees receiving LSC funding. Two hundred and sixty two programs received funds in 1998, while only 207 programs received fund in 2000, and a projected 170 programs in 2002. The GAO study should evaluate the process and the resulting program changes.
- The GAO study should examine the toll-free hotlines and computer case intake systems. It appears there are entire states and service areas, in which the case intake system is linked between the LSC recipient and non-LSC programs conducting statutorily-prohibited work. For instance, the operation of a so-called "shared" case intake system might include screening by the federally funded program and then referral or assignment of the case to a non-federally funded program. This may include the LSC and non-LSC funded programs being linked through the same computer system, so transfers of work between the two programs occur routinely. It also appears LSC has funded programs performing most or all initial case intake for an entire state or service area, which then supports or subsidizes the prohibited programs by the LSC programs absorbing the costs of case intake. These programs refer to themselves as "Hotline" or "Intake Referral" programs.
- The GAO study needs to include on-site reviews of at least a half dozen or so programs, to determine the effect of the use of LSC funds in states in which the *State Planning* process has been completed. The final GAO report on this study needs to comment on whether LSC funded recipients and non LSC programs, are sufficiently separated so they are in full compliance with the Program Integrity regulations in 45 C.F.R. §1610.

- GAO's investigation should include review of any and all documents relating to programs regarding the State Planning process, the funding of programs, and the establishment of these State Justice Communities. The Lane County, Oregon report issued by the LSC Office of Inspector General and appearing on its website should be examined. The following seven states are also recommended for inclusion in this study: Connecticut, Missouri, New Hampshire, North Carolina, Oregon, Texas and Vermont.
- The GAO's report should answer the following specific questions:
 - (1) Has the Legal Services Corporation process and practice of conducting *State Planning*, resulted in the use of LSC funds to support work for persons who are restricted from receiving assistance by LSC programs? If so, to what extent have LSC resources been used to support restricted activities?
 - (2) Has the Legal Services Corporation required its programs/grantees to coordinate and work with non-LSC programs conducting prohibited work, as part of the creation of State Justice Communities? If so, has such coordinated work utilized LSC funded Corporation or LSC grantee staff time, or any other LSC resources?
 - (3) Have LSC funds been used, in any way, to establish and support services for persons, or groups of persons, who are prohibited by statute from receiving LSC funds?

In 1996 Congress specifically amended the LSC Act by providing in §503 of Public Law 104-134, LSC grantees should compete for receipt of federal grant money. This reform was in response to critics of LSC, who charged LSC grantee attorneys produced substandard work, engaged in controversial litigation, received their LSC funding regardless of work quality, and renewal of grant funding had become an entitlement. The LSC Board of Directors, as required by the 1996 changes, promulgated regulations, found in 45 C.F.R. §1634,

implementing a system of competition. Critics argue however, these federal regulations as implemented guarantee little or no competition for grants, and the formation of State Justice Communities through the Corporation's *State Planning Initiative*, has resulted in the creation of state monopolies which will thwart any future competition with the existing grantees.

In support of this allegation, critics cite a 1997 Philadelphia case, in which the private law firm of Dessen, Moses & Sheinhoff placed a competitive bid to set up a new, and arguably more efficient agency, in the five county Philadelphia region. While the bid was competitive and Dessen came close to being awarded the grant, worth approximately \$400,000, Dessen was forced to withdraw its bid because of pressure received by a joint effort of the current legal services grant recipient and the teacher and labor unions. Most remarkably, Dessen would have been the *only firm in the country* to be awarded a contract to provide legal services over a bid from an established non-profit provider. In addition, it is worth noting legal services lawyers engaged in picketing the Dessen firm, in violation of the statute and federal regulations. The supporting newspaper articles from the *Legal Intelligencer* were provided to GAO staff the week of April 15, 2002.

The GAO report should specifically address the following questions:

- (4) Has the creation of larger program service areas, and many statewide service areas, resulted in anti-competitive conditions?
- (5) Has the creation of "State Justice Communities" resulted in discouraging competition for grants instead of encouraging competition?
- (6) Since the congressional mandate for competition was prescribed by Congress in 1996, has competition occurred? If not, the GAO should provide recommendations for promoting competition for federal grants.

Finally, we would like to amend our March 12, 2002 letter specifically on page three, question five, to include access problems experienced by the LSC Office of Compliance and Enforcement. On Monday April 29, 2002, the President of the

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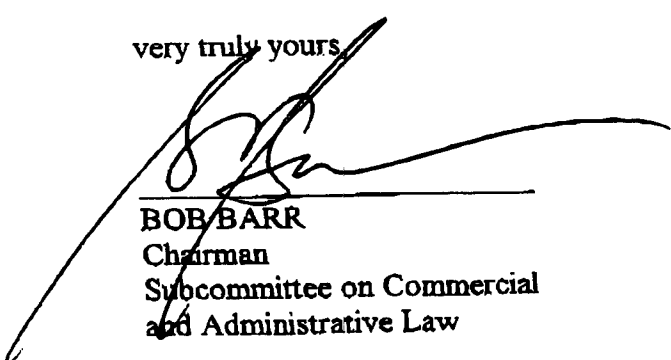
Legal Services Corporation issued a new records access policy. In addition to reporting back to the Subcommittee a detailed description of the past access problems, the GAO should include an analysis of how this recently issued policy will affect future access to records requests from the grantees/programs. In addition, the following five states/programs are also recommended for inclusion for follow up on case service reporting statistics and access issues: Colorado (Colorado Legal Services), Florida (Legal Services of North Florida), Missouri (Legal Aid of Western Missouri), New York (West Chester/Putnam Legal Services) and California (California Rural Legal Assistance).

It is very important the GAO speak with all levels of staff at the Corporation, including the Inspector General's office and the Office of Compliance and Enforcement, and not limit receipt of information to LSC management. Of course, conversations with Corporation staff should be handled with appropriate discretion in order to insure employees are able to speak with as much candor as possible to the GAO.

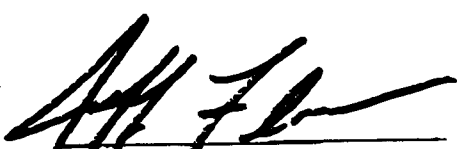
If you have any questions, please contact Patricia DeMarco, Oversight Counsel, at 202/225-6793. Thank you, in advance, for your kind consideration of our request.

With warm regards, we are

very truly yours,



BOB BARR
Chairman
Subcommittee on Commercial
and Administrative Law



JEFF FLAKE
Vice-Chairman
Subcommittee on Commercial
and Administrative Law

BB: pfd

cc: The Honorable F. James Sensenbrenner, Chairman, Judiciary Committee
The Honorable Melvin Watt, Ranking Member, Subcommittee on Commercial
and Administrative Law